

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CARLOS COLVIN,

Plaintiff,

v.

**3:09-CV-132
(FJS/VEB)**

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES

LACHMAN & GORTON
1500 East Main Street
P.O. Box 89
Endicott, New York 13761-0089
Attorneys for Plaintiff

OF COUNSEL

PETER A. GORTON, ESQ.

**SOCIAL SECURITY ADMINISTRATION
OFFICE OF REGIONAL GENERAL
COUNSEL, REGION II**
26 Federal Plaza – Room 3904
New York, New York 10278
Attorneys for Defendant

KARLA J. GWINN, ESQ.

SCULLIN, Senior Judge

ORDER

On February 3, 2009, Plaintiff commenced this action seeking judicial review of Defendant's final decision denying benefits pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3). *See* Dkt. No. 1. Defendant submitted his answer on June 12, 2009. *See* Dkt. No. 9. Plaintiff filed a brief in support of his complaint on September 1, 2009, *see* Dkt. No. 13; and Defendant filed his brief in opposition on November 12, 2009, *see* Dkt. No. 17. Finally, Plaintiff filed a letter motion in which he sought leave to submit a rebuttal. *See* Dkt. No. 18. On June 10, 2011,

Magistrate Judge Bianchini issued a Report and Recommendation, in which he recommended that the Court grant Plaintiff's motion for leave to submit a rebuttal, deny Defendant's motion for judgment on the pleadings, grant Plaintiff's motion for judgment on the pleadings, reverse Defendant's decision and remand the case to Defendant pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings. *See* Dkt. No. 20 at 21. Neither party filed any objections to this Report and Recommendation.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting that review, "the Court may 'accept, reject, or modify, in whole or in part, the recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Bianchini's June 10, 2011 Report and Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Bianchini's June 10, 2011 Report and Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Plaintiff's motion for leave to submit a rebuttal is **GRANTED**; and the Court further

ORDERS that Plaintiff's motion for judgment on the pleadings is **GRANTED**; and the Court further

ORDERS that Defendant's motion for judgment on the pleadings is **DENIED**; and the Court further

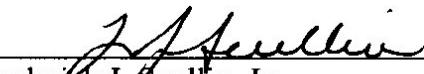
ORDERS that Defendant's decision denying benefits is **REVERSED**; and the Court further

ORDERS that this case is remanded to Defendant, pursuant to sentence four of 42 U.S.C. § 405(g), for further administrative proceedings consistent with Magistrate Judge Bianchini's Report and Recommendation; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Plaintiff and close this case.

IT IS SO ORDERED.

Dated: September 12, 2011
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge